



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Review and Discussion of Proposed Vending Ordinance

MEETING DATE: May 1, 2007

PREPARED BY: Community Improvement Manager

RECOMMENDED ACTION: Review and comment on information presented regarding a proposed Vending Ordinance.

BACKGROUND INFORMATION: The issues related to nuisance conditions and activities associated with mobile vendor operations in general, and mobile food vendors more specifically, has been a topic of discussion before the Lodi City Council since 1999.

More recently, in July of 2006, Staff provided a summary of the issues being faced in the community related to mobile food vendors and other itinerant merchants, as well as various options for enforcement and challenges related to each. Subsequent to the direction that was given and implemented from that meeting, Staff brought this issue back before the Council on September 20, 2006, in response from both the vendors affected by the enforcement action and their customer-base in the community. Direction was given at that time to review ordinances from other jurisdictions and to return with a model ordinance that would address both mobile food vendors and itinerant merchants.

In this presentation to the Council, Staff presents a draft of a Vending Ordinance that addresses vending activities on both public streets, sidewalks and alleys, and on private property. Likewise, it addresses both mobile food vendors, be that motorized or pushcart, and the itinerant merchants of a variety of goods and merchandise.

Issues to Address

There have been specific incidents over the past several years to support our concerns regarding health and safety hazards related to certain food vending operations. From traffic hazards to inadequate sanitation or restroom facilities, to unsafe electrical and plumbing, these documented incidents have made it clear that there is a need for certain regulations to safeguard the general public's health and safety.

As with any land use, the issue of incompatibility between adjacent commercial and residential uses became a source of conflict. Several of the food vendor sites located along Cherokee Lane were directly adjacent to residential properties and complaints from residents in those areas pertaining to noise, parking, traffic and general unsightliness were common. One method of addressing this issue was to create defined buffers from any residential uses, regardless of zoning designation. The impact and response to this option will be referenced later in this report.

APPROVED: _____
Blair King, City Manager

While mobile food vendors were the most consistent source of complaints, the seasonal merchants, setting up either on street corners and sidewalks selling flowers, gift baskets and other themed merchandise around Valentine's Day and Mother's Day, and itinerant merchants in parking lots along busy thoroughfares that display and sell flags, rugs, statues, paintings or other rather high profile wares each weekend during the spring and summer. Local florists have contacted us each year to complain about not only the impact that these itinerant flower merchants have on their holiday business, but also the lack of business licensing and sales tax revenue that is lost by the City.

Consolidation

As identified in the presentation of July 2006, the current regulations pertaining to vending activities are spread throughout various chapters of the Lodi Municipal Code, making interpretation and application of the regulations more difficult and confusing. One of the goals of this process has been to consolidate the regulations as much as possible, thereby making interpretation and enforcement more user-friendly, for both Staff and the public alike.

This consolidation also takes in the regulations pertaining to motorized ice cream vendors that operate from the street as well as the pushcart food vendors that operate from both the streets and sidewalks, and from private property.

Using an Effective Model

The attorney representing the local food vendors, David LeBeouf, suggested the use of the City of Stockton's recently adopted ordinance as a model. After a review of ordinances from several cities and counties through California, the Stockton ordinance did stand out as the most recent version and from Mr. LeBeouf's remarks, one that would face the least resistance from the vending community.

Preparing the Model Ordinance

As early as 1999, Staff had looked at revising the current Lodi Municipal Code Chapter 9.18 - Selling on Street and Sidewalks, to incorporate the consolidation of the pertinent regulations currently found in several chapters of the Municipal Code. This still remains the most likely location in which to place these regulations. The other aspect of the model ordinance is the incorporation of regulations that pertain to activities from private property. Many of the ordinances that were reviewed in preparing this model, have the private property regulations incorporated into the Development Code. For the most part, the Development Codes noted during this process are more modern than our current Zoning Ordinance, as they have recently been updated or implemented. As we are just beginning what could be a lengthy process of reviewing and adopting a new Development Code for Lodi, it seems most effective to incorporate the appropriate regulations pertaining to private property into this model code and then reference them during the adoption of any new Development Code in the future.

In our meeting with the vendors at the Lodi Improvement Committee meeting on April 3rd, 2007, we presented a number of features that were under consideration for incorporation into the new ordinance. In addition to the features of the City of Stockton's ordinance, there were two other key elements that were presented.

One was to establish a set buffer between the food vendors and any residential use. Based upon the criteria for notification for land use issues, a buffer of 300' was the initial distance proposed for discussion. That feature, demonstrated on the map of all current food vending vehicle operations, would restrict 12 of the 13 locations currently being used. It was noted that because of the close proximity to residential at most of these locations, a reduction of that buffer to 100' would still have an adverse impact on 9 of the 13 locations.

The second element, while not part of the Stockton ordinance for vendors, is still borrowed from Stockton's Municipal Code. An annual Permit to Operate process would provide Staff the opportunity to review the specific sites that the vendors intend on operating from. This site review would include much of what is required for verification under the City of Stockton's regulations that we would propose to implement here; namely that the locations are developed appropriately for use, that the property owner

has authorized use of the property, that the required restroom facilities are provided, that all appropriate business licensing, Peddler's license and Health Department permits have been obtained, and that they have read and agree to abide by the regulations governing their vending operations. This element would also provide the opportunity to review, suspend or revoke a vendor's Permit to Operate should any nuisance conditions or code violations be noted, thereby providing a means of addressing specific issues at each site rather than placing certain restrictions on the vendors as a whole.

The comments and concerns that were raised at that Lodi Improvement Committee meeting involved mainly the creation of a buffer from residential properties, which would all but eliminate most all of the current vending locations; and the fact that a permanent restaurant facility could open up at many of these same locations without the same restrictions. It was pointed out that there is a significant difference in the activities based at a restaurant establishment as opposed to a mobile food vendor site.

The Permit to Operate process could be crafted in such a fashion so as not to be too onerous for the vendor. When discussed at the meeting with the vendors, it was received fairly well. While it was originally presented as geared toward just those vendors that plan to operate from private property, it would be just as easy to make it universal to cover all vendors and could even be adapted to include special tent sales and other one-time events. Considering that, the Permit To Operate concept will be proposed instead of a buffer from residential property.

Summary of Proposed Ordinance

Under the proposed ordinance, the existing Chapter 9.18 – Vending on Streets and Sidewalks would be repealed and reintroduced as Chapter 9.18 – Vending on Streets, Sidewalks and Private Property. Much of the code language comes from the City of Stockton's food vendor ordinance, with minor changes throughout the body of the ordinance to reference "vendors" in general rather than just "mobile food vendors."

New code language would be included in the following code sections:

- Section 9.18.010 – Declaration of Purpose; to provide findings and define the purpose and intent of the ordinance.
- Section 9.18.040 – Permit To Operate; to clarify the required submittals for vendors operating from private property and to establish grounds for denial or further conditioning of the Permit to Operate.
- Section 9.18.060 – Exemption; in order to provide specific exemption to vending activities conducted in association with other approved or regulated events.
- Section 9.18.090 – Condition/Appearance of Site; in order to restrict the placement of permanent improvements on a site without the necessary building permit.
- Section 9.18.150 – Penalties; in order to provide for a process of suspension or revocation of the Permit to Operate.

In addition, current code language from the Lodi Municipal Code is incorporated as follows:

- Section 9.18.060 – Exemptions; to include the current exemptions for the distribution of newspapers, fliers or handbills.
- Section 9.18.070 – Encroachment Permit; in order to incorporate LMC Section 10.44.080. The issue of whether this Section is even necessary with the new Permit to Operate process is being reviewed with Public Works and will be decided prior to the final draft of the ordinance.
- Section 9.18.150 – Penalties; to incorporate the current penalties. It is expected that language will be added to allow for the penalties established under our Administrative Enforcement Provisions to be incorporated or referenced.

The Draft Ordinance has been distributed to the various departments and the City Attorney's Office for review and comment. The comments that have been received at this point are as follows:

Public Works

- Use of the phrase “unsafe conditions” in place of “traffic hazards”;
- Addition of “traffic controls” in 9.18.040(C)(5)(b);
- Omit “controlled by a traffic light or stop sign” from Sec. 9.18.050(A)(2), to impose 100’ restriction from any intersection to avoid sight problems for vehicular traffic;
- Addition of “and hydrants” in Sec. 9.18.050(B)(4);
- Preference for keeping “10 minute” threshold in Sec. 9.18.070 for triggering Encroachment Permit requirement.

FISCAL IMPACT: N/A

FUNDING AVAILABLE: N/A

Joseph Wood
Community Improvement Manager

Concurred:

Randy Hatch
Community Development Director

Attachments

Chapter 9.18 VENDING ON STREETS, SIDEWALKS AND PRIVATE PROPERTY

Comment: Purple text indicates current Lodi code language.

9.18.010

Declaration of Purpose

The City Council expressly finds that the vending of produce, prepared or prepackaged foods, goods, wares, and/or services on public streets, sidewalks or alleys and on private property pose unsafe conditions traffic hazards and special dangers to the public health, safety and welfare of the residents of the City of Lodi. It is the purpose and intent of the City Council, in enacting this article, to provide those persons who engage in those types of vending operations with clear and concise regulations to prevent safety, traffic and health hazards, as well as to preserve the peace, safety and welfare of the community.

Comment: Underlined purple text indicates new Lodi code language.

Comment: PW

9.18.020

Definitions

A. “Business Owner” shall mean any person, firm, or corporation, which owns or controls any interest in any business engaged in vending as defined in Subsection F hereof.)

B. “Commissary” shall mean a food establishment in which food, containers, equipment, or supplies are stored or handled for use in motorized food wagons.

C. “Conveyance” as used in this chapter means any vehicle, trailer, cart, wagon or stand, with or without wheels, which may be moved from one place to another under its own power or by other means.

D. “Linear Frontage” is the method used to determine distances as used in this Chapter.

E. “Mobile Food Vendor” shall mean any person, as defined in this article, who owns, controls, manages and/or leases a food vending vehicle, pushcart or wagon; and/or, contracts with a person(s) to drive, operate prepare foods and/or vend from a food vending vehicle, pushcart or wagon.

F. “Motorized food wagon” shall mean any vehicle as defined in Section 670 of the California Vehicle Code, which is equipped and used for retail sales of prepared; pre-packaged; or unprepared, unpackaged food or foodstuffs of any kind on any public street, alley, highway, or private street, alley, or property within the City of Lodi. For the purposes of this Division, a motorized food wagon shall also include any trailer or wagon pulled by a vehicle.

G. “Persons” shall mean any person, firm, partnership, association, or corporation, and includes, but is not limited to, owners, operators, drivers, lessors, and lessees of motorized food wagons.

H. “Vend” or “Vending” shall mean the sale of any goods, wares, merchandise, prepared; pre-packaged; or unprepared, unpackaged food or foodstuffs of any kind from a motorized food wagon on private or public property. Vending from a motorized food wagon generally has the following characteristics:

- 1) Food is ordered and served from a take-out counter that is integral to the motorized food wagon;
 - 2) Food is paid for prior to consumption;
 - 3) Motorized food wagons from which the food is sold typically have a take-out counter and space for customer queuing;
 - 4) Food and beverages are served in disposable wrappers, plates, or containers; and
 - 5) Food and beverages are prepared and sold for off-site consumption.
- I. “Vendor”/“Operator” shall mean any person who sells and makes immediate

Comment: Normal black text indicates model code language taken from Stockton Municipal Code.

delivery, or offers for sale and immediate delivery, any goods, wares, or merchandise; or drives, operates, vends, and/or prepares food on or from a motorized food wagon.

9.18.030

Regulations For Sales

It shall be unlawful for any person to vend, or attempt to engage in vending or operate any vehicle or conduct any business for the purpose of vending from any vehicle or conveyance parked, stopped, or standing upon any public street, alley, highway, or property, or private street, alley, or property within the City of Lodi except in accordance with all applicable provisions of this Code.

9.18.040

Permit to Operate

A person desiring to engage in a vendor operation, as defined by this section, shall submit a written application for a Permit To Operate in a form acceptable to and with all supporting information required by the City of Lodi. Such application shall be accompanied by a non-refundable, non-transferable application fee in an amount as established by Resolution of the City Council. Any such permit shall be required to be renewed annually and a separate non-refundable, non-transferable application fee shall be paid yearly for such renewal application. Vendors must have the permit in their possession when vending. There must be at least one Vendor with a valid permit present whenever vending is taking place.

A. A Vendor must obtain a background check in accordance with the requirements of Section 9.16.030 of this Code.

B. Every Vendor shall obtain a City of Lodi Business License.

C. As part of the Permit to Operate application, the Vendor or Business Owner shall provide the following:

1) Proof of current vehicle registration and a copy of an applicable vehicle insurance policy.

2) Four photographs (showing different exterior views) of each motorized food wagon.

3) A copy of a current San Joaquin County Environmental Health permit.

4) A copy of their current business license and applicable Board of Equalization Seller's Permit.

5) For mobile food vendors, Business Owners must show proof of payment to a commissary for the prior twelve (12) months for all cases involving the reissuance of a Permit; and current proof of payment for new vendors.

6) If the vendor is operating on private property, the Business Owner shall provide the following:

a. an affidavit in a form approved by the City from the property owner (if other than self) permitting the vendor to locate on the site.

b. a Site Plan, drawn to scale and with dimensions, indicating the location of all existing buildings, structures, driveways, parking spaces, traffic controls and improvements, and the location or areas where the proposed vending activity, structures and improvements related to the vending activity, will be located upon the site.

c. in the case of mobile food vendors from private property, an affidavit from the business or location providing the required restroom facilities for food service workers, stating the hours that those facilities are being made available.

D. The following may constitute grounds for denial of a Permit to Operate:

1) The vending operation or activity as proposed by the applicant does not

Comment: 9.16.030 Certificate of Identification (aka: Peddler's License)

Comment: As requested by City Manager

Comment: PW

comply with all applicable laws including, but not limited to, the applicable building, zoning, housing, fire, safety, and health regulations;

2) The applicant is unable to obtain the required Peddler's license due to a criminal background check;

Comment: Do we need to define?

3) The applicant has, within three (3) years immediately preceding the date of filing of the Application, had a Permit to Operate, Peddler's License, or related permit, which was issued within the state of California, suspended or revoked;

4) The applicant has knowingly made a material misstatement in the Application for a Permit to Operate;

5) There have been excessive calls for service to the Police Department within the twelve (12) months preceding the Application with inadequate response by the vendor or business owners or operators, involving the commission of crimes, disturbances, public nuisances, or applicable Lodi Municipal Code violation investigations, which are located, committed, or generated on the premises of the vending operation.

6) Failure to get clearance from San Joaquin County Environmental Health.

E. As an alternative to a denial of a Permit to Operate for failure to meet the requisite Housing, Building, Health, and Fire Codes, or failing to pass an investigation conducted by the Lodi Police Department, Lodi Fire Department, or the San Joaquin County Environmental Health, the City Manager or designee may issue a Conditional Permit to Operate. Said Conditional Permit to Operate shall be issued with conditions imposed on the operation of the premises. All conditions shall be complied with in order to maintain the Conditional Permit to Operate in a valid status. Failure to comply with the imposed conditions will subject the Conditional Permit to Operate to suspension and/or revocation procedures or any other remedy authorized by law.

9.18.050

Location

A. A vendor may locate and operate in the public right-of-way subject to the following conditions:

1) A vendor shall not operate within three hundred (300) feet of any school grounds, park, playground, or City operated recreation center.

2) A vendor shall not operate within one hundred (100) feet of any street intersection. ~~(controlled by a traffic light or stop sign.)~~

Comment: PW

3) In addition to the above, a vendor must comply with the following regulations, depending upon the type of use in which it is located:

a. Residential Use Area:

i. In a Residential Use Area, a vendor shall move not less than four hundred (400) feet at least every ten (10) minutes and may not return to a previous location or within four hundred (400) feet of a previous location on the same calendar day.

Comment: Stockton's Regs would allow 30 minutes in one location. Ten (10) minutes is in line with our current regs and I think is appropriate for a residential district. Also note that this is geared toward pushcart and ice cream truck vendors, as the Lunch Wagons wouldn't have sufficient time under either the 10 or 30 minute timeframes.

ii. Permitted hours of operation are from 7:00 a.m. to 8:00 p.m.

iii. A vendor may not be located within four hundred (400) feet of another vendor.

b. Commercial Use Area:

i. In a Commercial Use Area, a vendor shall move not less than four hundred (400) feet at least every three (3) hours and may not return to a previous location or within four hundred (400) feet of a previous location on the same calendar day.

ii. Permitted hours of operation are from 6:00 a.m. to 12:00 a.m.

iii. If a vendor is located in a Commercial Use Area and is within four hundred (400) feet of a residence, it shall comply with the requirements listed above for Residential Use Area.

c. Industrial Use Area:

i. In an Industrial Use Area, a vendor may operate twenty-three (23) hours a day.

ii. If a vendor is located in an Industrial Use Area and is also within four hundred feet (400) feet of a residence, it shall comply with the requirements listed above for Residential Use Area.

4) No vendor shall be located or maintained on public property, including bicycle pathways, inconsistent with any other City regulations.

B. A vendor may locate on private property subject to the following conditions:

1) Must be incidental to a primary use with a valid Business License; a temporary vendor shall not be the primary use of a parcel and they shall not be permitted as an accessory use to a stand-alone parking lot.

2) A vendor cannot utilize, or be located on, parking spaces required for the primary use at that property.

2) A vendor cannot be located on a vacant, undeveloped parcel or lot.

3) A vendor must be located on a paved concrete or asphalt parking surface.

4) A vendor cannot interfere with access, aisles, circulation, driveways or fire lanes and hydrants or create an unsafe condition traffic hazard.

5) A vendor cannot interfere with pedestrian movement or create a pedestrian hazard.

Comment: PW

Comment: PW

9.18.060

Exemption

A. Any person engaged in vending activities conducted in connection with the operations of a state-certified open-air market or an authorized street fair or event under a special event permit, lease, real property license, agreement, or other entitlements issued by the City of Lodi.

B. Any person delivering any goods by vehicle where such goods have been ordered in advance for such delivery from any business located at a permanent location and which goods are being delivered from such location to the customer by vehicle, regardless of the point of sale.

C. Section 9.18.050 shall not apply to the sale or distribution of any newspaper, flier or handbill.

9.18.070

Encroachment Permit *(Repeals Section 10.44.080)*

A. Notwithstanding section 9.18.050(A) of this code a person may stand or park a conveyance upon or along a public street, right-of-way or sidewalk only in accordance with the terms of a valid encroachment permit issued by the city council. Said encroachment permit shall designate the specific location where the conveyance may stand or park in addition to such other conditions and limitations as the city council in its discretion may find necessary to the public health, safety and general welfare.

B. In the event that the holder of any such permit is found by any court or competent jurisdiction to have violated any condition of a valid encroachment permit issued in accordance with this section such encroachment permit shall be immediately rendered void and said person shall be prohibited from seeking the reinstatement of said permit or the issuance of any additional encroachment

Comment: This is what allows for Fugazi's Hot Dog Stand at the Post Office. At what point (time in one place) should Encroachment Permits be required for vendors operating in street or sidewalk? 10 minutes -residential? 3 hours-commercial? 23 hours-industrial?

permit for a period of 180 calendar days from the date the previous permit was rendered void.

- 9.18.080 Application of Other Laws and Regulations
- A. The provisions of this Chapter prohibiting the stopping or parking of a vehicle shall apply at all times or at those times specified by this Chapter, except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.
- B. The provisions of this Chapter imposing a time limit on stopping or parking shall not relieve any person from the duty to observe other more restrictive provisions of the California Vehicle Code, this Code or any other ordinances of the City, prohibiting or limiting the stopping or parking of vehicles in specified places or at specified times.
- 9.18.090 Condition/Appearance of Site
- A. The site shall be maintained in a safe and clean manner at all times.
- B. No tables, chairs, fences, shade structures, or other site furniture, (permanent or otherwise) or any free standing signs shall be permitted in conjunction with the vendor, unless otherwise approved in accordance with subsection C.
- C. Should any site improvements be needed for on-going vending operations, the vendor shall be required to apply for appropriate permits to ensure building and public safety and consistency with applicable building and zoning regulations.
- D. Exterior storage of refuse, equipment, or materials associated with the vendor is prohibited.
- 9.18.100 Condition/Appearance of Vehicle
- A. The vendor shall display, in plain view and at all times, current permits and licenses in or on their vehicle.
- B. Any vehicle used in the course of vending shall be entirely self-sufficient in regards to gas, water, and telecommunications. Should any utility hook-ups or connections to on-site utilities be required, the vendor shall be required to apply for appropriate permits to ensure building and public safety and consistency with applicable building and zoning regulations.
- C. The vendor shall not discharge items from their vehicle onto the sidewalk, gutter, storm inlets, or streets.
- 9.18.110 Lighting
- The vendor shall install adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent properties.
- 9.18.120 Sanitation
- A. All food vending vehicles shall operate out of a commissary pursuant to California Health and Safety Code section 114287.
- B. All food vending vehicles shall be equipped with refuse containers large enough to contain all refuse generated by the operation of such a vehicle, and the vendor of the food vending vehicle shall pick up all refuse generated by such operation within a twenty-five (25)-foot radius of the vehicle before such vehicle is moved. No vendor shall dispose of any trash or refuse in any such public or

Comment: Conflict noted between this Section applying to right-of-way and Sec. 9.18.120 which is geared toward private property. Trash containers a must for private property, but what about placement of containers when they're operating on streets/sidewalks? Relates back to Encroachment Permit issue.

private trash receptacle other than a trash receptacle owned, operated, or otherwise provided by and under the control of such vendor.

C. A food vending vehicle shall comply with California Health and Safety Code section 114299.5 regarding the availability of adequate toilet facilities for use by food service personnel.

Comment: A requirement if they are going to be remaining at one location for more than 1 hour. One of the issues checked during Permit to Operate application.

9.18.130

Safety and Security

A. No vending shall be permitted except after the motorized food wagon or other vending vehicle has been brought to a complete stop and parked in a lawful manner.

B. The vendor shall install signage in a visible location indicating that loitering is not permitted and customers may only remain on the lot for up to fifteen (15) minutes after receiving their food.

C. The vendor shall enforce the no loitering rule.

9.18.140

Applicability Of Regulations To Existing Business

The provisions of this article shall be applicable to all persons and businesses described herein whether the herein described activities were established before or after the effective date of the ordinance enacting this ordinance into law.

9.18.150

Penalties

Any person violating any provisions or failing to comply with any of the mandatory requirements of this chapter is subject to the following penalties:

A. Fines

1. A person convicted of a violation of this chapter is guilty of an infraction, punishable by a fine not exceeding one hundred dollars for the first violation;
2. A fine not exceeding two hundred and fifty dollars for a second violation of the same provisions within one year;
3. Third and subsequent convictions for violations of this chapter during any one-year period shall be deemed misdemeanors, punishable as specified in Section 1.08.010(B) of this code.

B. Suspension/Revocation of Permit To Operate

1. Any Permit to Operate issued hereunder may be summarily and temporarily suspended by the City Manager or designee in the event it is determined that the holder of such Permit has committed any act, which would constitute grounds for denial of a Permit to Operate pursuant to Section 9.18.040.(D) of this Chapter.

Any such suspension shall be accomplished by written notification of the suspension and the reasons therefore, sent by certified mail, return receipt requested, to the Operator's business address as approved in the Permit to Operate.

2. Any Permit to Operate may be suspended and/or revoked by the City Manager or designee after a review, where it is determined that:

- (a) The Vendor has violated the provisions of this Chapter; or
- (b) The Vendor has committed any act or engaged in action, which would constitute grounds for denial of the Permit to Operate pursuant to Section 9.18.040.(D) of this Chapter; or
- (c) The Vendor has engaged in fraud, misrepresentation, or false statements in conducting the vending operation or activity; or
- (d) The Vendor has failed to correct a violation within the time period ordered by the City; or

(e) The Vendor has operated or continued to operate without a Permit to Operate or after a Permit to Operate has been suspended .

9.18. 160

Enforcement

The provisions of this chapter may be enforced by any peace officer, or the director of Community Development or his/her designee.